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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Rulemaking to Amend Part 1 and Part 21) CC Docket No. 92-297
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band and) RM-7872; RM-7722
to Establish Rules and Policies for)
Local Multipoint Distribution Service)

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Second Notice of Proposed Rulemaking

Doris S. Freedman, Esq.
Acting Chief Counsel
Barry Pineles
Assistant Chief Counsel
Office of Advocacy
United States Small Business
Administration
Washington, DC 20416
(202) 205-6532

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On February 11, 1994, the Federal Communications Commission (FCC or Commission) issued this second notice of proposed rulemaking. The Commission seeks comments on two issues:

1) whether a negotiated rulemaking should be conducted to resolve the technical issues associated with utilization of the 27.5-29.5 GHz band (28 GHz band); and 2) the benefits accruing from various uses of the 28 GHz band. The FCC believes that resolution of the technical concerns may lead to the implementation of significant new communication technologies.

The Office of Advocacy concurs in the Commission's conclusion that new uses of the 28 GHz band may be available in the near future. Many small businesses may wish to participate in the offering of these new services and resolution of technical issues through negotiated rulemaking will be important to these

small businesses. Thus, the Office of Advocacy supports the use of negotiated rulemaking for the sole purpose of resolving technical issues.

While the resolution of technical issues is an important step in the allocation of the 28 GHz band, it is only a step. The Commission still must consider which services that use the 28 GHz band will best promote the public interest and goals of the Federal Communications Act.¹ The Office of Advocacy does not believe that the Commission should use negotiated rulemaking to determine the spectrum allocation that best serves the public interest. Rather, once technical issues have been addressed in the negotiated rulemaking, the Commission should use its normal notice and comment rulemaking process to allocate spectrum among various uses. The Office of Advocacy believes that a complete record in which the entire public has an equal voice in the rulemaking process will lead to the best allocation of spectrum. Furthermore, the Office of Advocacy believes that, when the record is developed, an allocation weighted towards terrestrial use will meet the primary statutory mission of the FCC -- making available rapid, efficient, and national communication services.

47 U.S.C. § 151.

¹ To the extent that the spectrum in the 28 GHz band is eligible for auctioning under Title VI of the 1993 Omnibus Budget Reconciliation Act, the Commission is required to provide a licensing scheme that gives small businesses the opportunity to provide service utilizing the 28 GHz band. No licensing regime can accommodate small businesses if the 28 GHz band is allocated entirely to satellite communication.

Currently, the 28 GHz band is assigned to satellite transmission technologies. However, technological breakthroughs have permitted terrestrial transmission within the 28 GHz band. The Commission has issued one full operating license and twelve experimental licenses for terrestrial uses of the 28 GHz band. Almost all of these licenses have been issued to small businesses. In contrast, all providers or potential providers of satellite service are large businesses or the National Aeronautics and Space Administration although some of the users of satellite transmission may be deemed small businesses.

Competing users, both satellite and terrestrial-based, may be able to share the 28 GHz band through such techniques as digital modulation. One of the primary unanswered questions in allocation of the 28 GHz band is whether terrestrial uses can coexist with satellite uses. The Office of Advocacy concurs with the FCC that the best method for resolving that issue is the use of a negotiated rulemaking. The parties involved can then offer their technical input and make direct inquiries of other parties about their data and engineering assumptions. The Office of Advocacy believes that negotiated rulemaking will lead to the most rapid resolution of technical issues surrounding the user of the 28 GHz band and avoid the current dispute associated with the award of pioneer preferences for personal communication services.

Resolution of these technical issues does not resolve the FCC's dilemma concerning spectrum allocation. In an ideal world, all of the users of a particular spectrum band could be accommodated. Scientific and engineering advances are gradually bringing communication technology closer to that ideal. Nevertheless, technology is not there yet and competing demands exist for use of the spectrum. The Commission then must decide the best method for utilizing the 28 GHz band. It may be that the negotiators will find that spectrum can be shared and multiple competing uses may be accommodated; or that only some competing uses may be excluded under a sharing arrangement; or that no sharing is possible under current technology. In any of these situations, the Commission still must decide on the appropriate allocation of uses for the 28 GHz band.

If satellite users and terrestrial users can coexist on the 28 GHz band, then Office of Advocacy has no objection to allowing all potential uses of the band. However, if coexistence is not possible, the Office of Advocacy supports an allocation that best benefits small business providers of telecommunication services.

Given the cost associated with the provision of satellite services,² the Office of Advocacy does not believe that small

² Two of the parties currently involved in the proceeding, Hughes and Suite 12, both want to use the 28 GHz band to provide a multichannel video delivery system. The ground-based system of Suite 12 is relatively inexpensive to develop while Hughes
(continued...)

businesses will have an opportunity to participate in the provision of services if the Commission allocates the 28 GHz band to satellite users. In addition to increasing opportunities for small business providers of services, terrestrial uses also may provide greater benefits to small business users. Terrestrial-based services are local in nature and multichannel video providers can narrowcast, i.e., develop programming for specific population markets and advertisers.³ Small businesses can use this narrowcasting feature to reach, at a reasonable cost, a large number of customers. Satellite services, both due to costs and their national reach, would not readily accommodate narrowcasting and its concomitant benefits to small business advertisers. Thus, the Office of Advocacy believes that substantial benefits exist in utilizing the 28 GHz for terrestrial services if coexistence is not possible.

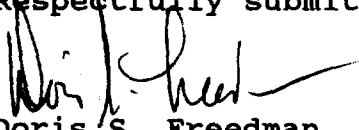
Although the Office of Advocacy believes that terrestrial-based services will best promote the public interest, Commissioner Barrett is correct in seeking wide public comment on

²(...continued)
estimates that its satellite direct broadcasting service may cost approximately \$500 million. Other potential satellite communication providers estimate system costs ranging from \$660 million to \$9 billion. Clearly, small businesses have no chance of participating as providers of satellite-based telecommunication services.

³ Terrestrial uses of the 28 GHz band do not involve large geographic areas. Thus, a multichannel provider on the 28 GHz band can provide different programming for Chinatown in Manhattan and Little Odessa in Brooklyn.

the allocation of the 28 GHz band. Only in this manner will the FCC have the appropriate record needed to make an enlightened decision and accommodate the interests of all Americans in the use of a valuable public resource.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Doris S. Freedman", with a long horizontal flourish extending to the right.

Doris S. Freedman
Acting Chief Counsel for Advocacy